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December 23, 2002

RECORDATION NO. 24256 FILED  
DEC 23 02 3:15 PM  
SURFACE TRANSPORTATION BOARD

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Reducing Revolver Loan and Security Agreement, dated as of October 18, 2002, a primary document as defined in the Board's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Secured Party:	Merrill Lynch Capital Business Financial Services Inc. 222 N. LaSalle Street 17 <sup>th</sup> Floor Chicago, IL 60601
Debtors:	The Western Group, LC Wyoming Colorado Railroad, Inc. Snowy Range Cattle Company, Inc. Western Railroad Builders, Inc. Southwestern Railroad, Inc. Cimmaron Valley Railroad, L.C. Clarkdale Arizona Central Railroad, L.C. Snowy Range Ranch, L.L.C. Verde Canyon Railroad, L.C. 3811 Airport Road Building N-8 Ogden, UT 84405

Mr. Vernon A. Williams  
December 23, 2002  
Page Two

A description of the railroad equipment covered by the enclosed document is:

30 locomotives bearing CVR, SW, AZCR, VCRR, WYCO and OERR reporting marks and road numbers attached hereto.

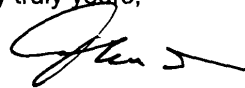
A short summary of the document to appear in the index is:

Reducing Revolver Loan and Security Agreement

Also enclosed is a check in the amount of \$30.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Alvord', with a stylized flourish extending to the right.

Robert W. Alvord

RWA/anr  
Enclosures



# THE WESTERN GROUP, LC

P.O. Box 1544 Ogden, UT 84402 801-621-5311 Fax 801-393-7733

## LOCOMOTIVES

ENGINES	PLATE #	PURCHASED FROM
CVR 3004	64-M2-1058	NATIONAL RAILWAY
CVR 3014	62-0-55-R	NATIONAL RAILWAY
CVR 3024	72-M3-1526	NATIONAL RAILWAY
CVR 3020	62-C-34 R	NATIONAL RAILWAY
CVR 3023	63-A-23 R	NATIONAL RAILWAY
CVR 4227		NATIONAL RAILWAY
SW 6323	64-L2-1068	WESTERN RAILWAY SUPPLY
SW 2163	M-50-12422	ATSF RAILROAD
SW 25	63-E-32	PHELPS DODGE
SW 27	78-D3-1006	PHELPS DODGE
SW 28		PHELPS DODGE
SW 29	76-E3-1006	PHELPS DODGE
SW 30	65-J1-1120	PHELPS DODGE
SW 6798	76-A3-7508	WESTERN RAILWAY SUPPLY
SW 4291	5908	
SW 4292	52-C-107	
SW 2182		ATSF RAILROAD
SW 2164	51-E-3	ATSF RAILROAD
SW 2601		NATIONAL RAILWAY
SW 2602		NATIONAL RAILWAY
SW 3000		NATIONAL RAILWAY
AZCR 3413	54-C-102	WESTERN RAILWAY SUPPLY
AZCR 2278	56-D-152	
AZCR 2279	71-C3-7014	
VCRR 1510	70-C3-1040	MTN DIESEL
VCRR 1512	70-H3-1140	MTN DIESEL
WYCO 6083	818-6637	DURBANO METALS
WYCO 2171	52-J-109	ATSF RAILROAD
OERR 1608	77-H3-7013	
OERR 2072	76-74	GRAND CANYON RAILROAD

RECORDATION NO. 24256 FILED

DEC 23 '02

3:15 PM



**Merrill Lynch**

**SURFACE TRANSPORTATION BOARD  
WCMA\* REDUCING REVOLVER- LOAN AND SECURITY AGREEMENT**

**WCMA LOAN AND SECURITY AGREEMENT NO. 69Q-07167** ("Loan Agreement") dated as of October 18, 2002, between **THE WESTERN GROUP, L.C.**, a limited liability company organized and existing under the laws of the State of Utah having its principal office at 3811 Airport Road, Building N-8, Ogden, UT 84405 ("Account Holder") and **WYOMING COLORADO RAILROAD, INC., SNOWY RANGE CATTLE COMPANY, INC., WESTERN RAILROAD BUILDERS, INC., SOUTHWESTERN RAILROAD, INC., CIMMARON VALLEY RAILROAD, L.C., CLARKDALE ARIZONA CENTRAL RAILROAD, L.C., SNOWY RANGE RANCH, L.L.C., VERDE CANYON RAILROAD, L.C.** having their principal office at 3811 Airport Road, Building N-8, Ogden, UT 84405 ("Customer 2")(Account Holder and Customer 2 shall be individually referred to as a "Customer" and collectively, as the "Customers"), jointly and severally as co-borrowers, and **MERRILL LYNCH BUSINESS FINANCIAL SERVICES INC.**, a corporation organized and existing under the laws of the State of Delaware having its principal office at 222 North LaSalle Street, Chicago, IL 60601 ("MLBFS").

Pursuant to that certain **WORKING CAPITAL MANAGEMENT® ACCOUNT AGREEMENT NO. 69Q-07168** and the accompanying Program Description (as the same may be, or have been, amended, modified or supplemented, the "WCMA Agreement") between Account Holder and MLBFS' affiliate, **MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED ("MLPF&S")**, Account Holder opened, or shall prior to the Activation Date open, a Working Capital Management Account pursuant to the "WCMA Service" and the "WCMA Program" described in the WCMA Agreement and any documents incorporated therein. The WCMA Agreement is by this reference incorporated as a part hereof. In conjunction therewith, Customers have requested that MLBFS make a reducing revolving credit facility available to Customer (the "Reducing Revolver") in the amount and upon the terms hereafter specified, and, subject to the terms and conditions hereafter set forth, MLBFS has agreed to provide a Reducing Revolver for Customer.

Accordingly, and in consideration of the premises and of the mutual covenants of the parties hereto, Customer and MLBFS hereby agree as follows:

**Article I. DEFINITIONS**

**1.1 Specific Terms.** In addition to terms defined elsewhere in this Loan Agreement, when used herein the following terms shall have the following meanings:

"Activation Date" shall mean the date upon which MLBFS shall cause the WCMA Line of Credit to be fully activated under MLPF&S' computer system as part of the WCMA Program.

"Bankruptcy Event" shall mean any of the following: (i) a proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, liquidation, winding up or receivership law or statute shall be commenced, filed or consented to by any Credit Party; or (ii) any such proceeding shall be filed against any Credit Party and shall not be dismissed or withdrawn within sixty (60) days after filing; or (iii) any Credit Party shall make a general assignment for the benefit of creditors; or (iv) any Credit Party shall generally fail to pay or admit in writing its inability to pay its debts as they become due; or (v) any Credit Party shall be adjudicated a bankrupt or insolvent; or (vi) any Credit Party shall take advantage of any other law or procedure for the relief of debtors or shall take any action for the purpose of or with a view towards effecting any of the foregoing; or (vii) a receiver, trustee, custodian, fiscal agent or similar official for any Credit Party or for any substantial part of any of their respective property or assets shall be sought by such Credit Party or appointed.

"Business Day" shall mean any day other than a Saturday, Sunday, federal holiday or other day on which the New York Stock Exchange is regularly closed.

"Business Guarantor" shall mean every Guarantor that is not a natural person.

"Certificate of Compliance" shall mean, as applicable, that duly executed certificate, substantially the same form as Exhibit B attached hereto to the extent such certificate shall be applicable, of the president, chief financial officer or chief executive officer of Customers, certifying as to the matters set forth in such certificate.

"Closing Date" shall mean the date upon which all conditions precedent to MLBFS' obligation to make the Loan shall have been met to the satisfaction of MLBFS.

"Collateral" shall mean (i) all Accounts, Chattel Paper, Contract Rights, Inventory, Equipment, Fixtures, General Intangibles, Deposit Accounts, Documents, Instruments, Investment Property and Financial Assets of Account Holder, including but not limited to those locomotives attached hereto and made a part hereof as Exhibit A, howsoever arising, whether now owned or existing or hereafter acquired or arising, and wherever located; together with all parts thereof (including spare parts), all accessories and accessions thereto, all books and records (including computer records) directly related thereto, all proceeds thereof (including, without limitation, proceeds in the form of Accounts and insurance proceeds), and the additional collateral described in Section 4.6 (b) hereof.

"Commitment Expiration Date" shall mean November 18, 2002.

"Commitment Fee" shall mean a fee of \$14,000.00 due to MLBFS in connection with this Loan Agreement.

"Credit Party" and "Credit Parties" shall mean, individually or collectively, Account Holder, any and every Customer 2, all Guarantors and all Pledgors.

"Default" shall mean either an "Event of Default" as defined in Section 4.5 hereof, or an event which with the giving of notice, passage of time, or both, would constitute such an Event of Default.

"Default Rate" shall mean an annual interest rate equal to the lesser of: (i) two percentage points over the Interest Rate; or (ii) the highest interest rate allowed by applicable law.

"Event of Loss" shall mean the occurrence whereby any tangible Collateral is damaged beyond repair, lost, totally destroyed or confiscated.

"Excess Interest" shall mean any amount or rate of interest (including the Default Rate and, to the extent that they may be deemed to constitute interest, any prepayment fees, late charges and other fees and charges) payable, charged or received in connection with any of the Loan Documents which exceeds the maximum amount or rate of interest permitted under applicable law.

"GAAP" shall mean the generally accepted accounting principles in effect in the United States of America from time to time.

"General Funding Conditions" shall mean each of the following conditions precedent to the obligation of MLBFS to make the Loan or any Subsequent WCMA Loan hereunder: (i) Account Holder shall have validly subscribed to and continued to maintain the WCMA Account with MLPF&S, and the WCMA Account shall then be reflected as an active "commercial" WCMA Account (i.e., one with line of credit capabilities) on MLPF&S' WCMA computer system; (ii) no Default or Event of Default shall have occurred and be continuing or would result from the making of the Loan or such Subsequent WCMA Loan by MLBFS; (iii) there shall not have occurred and be continuing any material adverse change in the business or financial condition of any Credit Party; (iv) all representations and warranties of all of the Credit Parties herein or in any of the Loan Documents shall then be true and correct in all material respects; (v) MLBFS shall have received this Loan Agreement and all of the other Loan Documents, duly executed and filed or recorded where applicable, all of which shall be in form and substance satisfactory to MLBFS; (vi) the Commitment Fee shall have been paid in full; (vii) MLBFS shall have received, as and to the extent applicable, copies of invoices, bills of sale, loan payoff letters and/or other evidence satisfactory to it that the proceeds of the Loan will satisfy the Loan Purpose; (viii) MLBFS shall have received evidence satisfactory to it as to the ownership of the Collateral and the perfection and priority of MLBFS' liens and security interests thereon, as well as the ownership of and the perfection and priority of MLBFS' liens and security interests on any other collateral for the Obligations furnished pursuant to any of the Loan Documents; (ix) MLBFS shall have received evidence satisfactory to it of the insurance required hereby or by any of the Loan Documents; and (x) any additional conditions specified in the "WCMA Reducing Revolver Loan Approval" letter executed by MLBFS with respect to the transactions contemplated hereby shall have been met to the satisfaction of MLBFS.

"Guarantor" shall mean each Person obligated under a guaranty, endorsement or other undertaking by which such Person guarantees or assumes responsibility in any capacity for the payment or performance of any of the Obligations.

"Individual Guarantor" shall mean each Guarantor who is a natural person.

"Interest Due Date" shall mean the first Business Day of each calendar month during the term hereof.

"Interest Rate" shall mean a variable per annum rate equal to the sum of (i) 2.25% per annum, and (ii) the interest rate from time to time published in the "Money Rates" section of *The Wall Street Journal* as the one-month London Interbank Offered Rate (the "One-Month LIBOR"). Notwithstanding anything to the contrary, if more than one rate is so published, then the interest rate shall be the highest of such published rates. The Interest Rate will change as of the date of publication in *The Wall Street Journal* of a One-Month LIBOR that is different from that published on the preceding Business Day. In the event that *The Wall Street Journal* shall, for any reason, fail or cease to publish the One-Month LIBOR, MLBFS will choose a reasonably comparable index or source to use as the basis for the Interest Rate.

"Loan" shall mean the specific Reducing Revolver by MLBFS to Customers pursuant to this Agreement for the Loan Purpose and in the Loan Amount.

"Loan Amount" shall mean an amount equal to the lesser of: (i) 100% of the amount required by Customers to satisfy or fulfill the Loan Purpose, (ii) the aggregate amount which Customers shall request be advanced by MLBFS on account of the Loan Purpose on the Closing Date, or (iii) \$5,600,000.00.

"Loan Documents" shall mean this Loan Agreement, any indenture, any guaranty of any of the Obligations and all other security and other instruments, assignments, certificates, certifications and agreements of any kind relating to any of the Obligations, whether obtained, authorized, authenticated, executed, sent or received concurrently with or subsequent to this Loan Agreement, or which evidence the creation, guaranty or collateralization of any of the Obligations or the granting or perfection of liens or security interests upon any Collateral or any other collateral for the Obligations, including any modifications, amendments or restatements of the foregoing.

"Loan Purpose" shall mean the purpose for which the proceeds of the Loan will be used; to wit: to refinance Customer's existing term debt with Bank One.

"Location of Tangible Collateral" shall mean the address of Account Holder set forth at the beginning of this Loan Agreement, together with any other address or addresses set forth on an exhibit hereto as being a Location of Tangible Collateral.

"Maximum WCMA Line of Credit" shall mean the maximum aggregate line of credit which MLBFS will extend to Customers subject to the terms and conditions hereof, as the same shall be reduced each month in accordance with the terms hereof. On the Closing Date, the Maximum WCMA Line of Credit will equal the Loan Amount.

"Obligations" shall mean all liabilities, indebtedness and other obligations of Account Holder or any Customer 2 to MLBFS, howsoever created, arising or evidenced, whether now existing or hereafter arising, whether direct or indirect, absolute or contingent, due or to become due, primary or secondary or joint or several, and, without limiting the generality of the foregoing, shall include principal, accrued interest (including without limitation interest accruing after the filing of any petition in bankruptcy), all advances made by or on behalf of MLBFS under the Loan Documents, collection and other costs and expenses incurred by or on behalf of MLBFS, whether incurred before or after judgment, and all present and future liabilities, indebtedness and obligations of any or all the Customers under the Loan Documents and of Account Holder under that certain WCMA Loan and Security Agreement 69Q-07167.

"Permitted Liens" shall mean with respect to the Collateral: (i) liens for current taxes not yet due and payable, other non-consensual liens arising in the ordinary course of business for sums not due, and, if MLBFS' rights to and interest in the Collateral are not materially and adversely affected thereby, any such liens for taxes or other non-consensual liens arising in the ordinary course of business being contested in good faith by appropriate proceedings; (ii) liens in favor of MLBFS; (iii) liens which will be discharged with the proceeds of the initial WCMA Loan; and (iv) any other liens expressly permitted in writing by MLBFS.

"Person" shall mean any natural person and any corporation, partnership (general, limited or otherwise), limited liability company, trust, association, joint venture, governmental body or agency or other entity having legal status of any kind.

"Pledgor" shall mean each Person who at any time provides collateral, or otherwise now or hereinafter agrees to grant MLBFS a security interest in any assets as security for any Obligations.

"Subsequent WCMA Loan" shall mean each WCMA Loan other than the Loan, including, without limitation, each WCMA Loan to pay accrued interest.

"Termination Date" shall mean the first to occur of: (i) the last Business Day of the eighty-fourth (84th) full calendar month following the Closing Date, or (ii) if earlier, the date of termination of the WCMA Line of Credit pursuant to the terms hereof.

"WCMA Account" shall mean and refer to the Working Capital Management Account of Account Holder or any other Customer with MLPF&S identified as WCMA Account No. 69Q-07168 and any successor Working Capital Management Account of Account Holder with MLPF&S.

"WCMA Line of Credit" shall mean the line of credit funded by MLBFS through the WCMA Account.

"WCMA Loan" shall mean each advance made by MLBFS pursuant to the WCMA Line of Credit, including the Loan and each Subsequent WCMA Loan.

"WCMA Loan Balance" shall mean an amount equal to the aggregate unpaid principal balance of all WCMA Loans.

"UCC" shall mean the Uniform Commercial Code of Illinois as in effect in Illinois from time to time.

1.2 **Other Terms.** Except as otherwise defined herein: (i) all terms used in this Loan Agreement which are defined in the UCC shall have the meanings set forth in the UCC, and (ii) capitalized terms used herein which are defined in the WCMA Agreement (including, without limitation, "Money Accounts", "Minimum Money Accounts Balance", and "WCMA Directed Reserve Program") shall have the meanings set forth in the WCMA Agreement; and (iii) accounting terms not defined herein shall have the meaning ascribed to them in GAAP.

1.3 **UCC Filing.** Account Holder hereby authorizes MLBFS to file a record or records (as defined or otherwise specified under the UCC), including, without limitation, financing statements, in all jurisdictions and with all filing offices as MLBFS may determine, in its sole discretion, are necessary or advisable to perfect the security interest granted to MLBFS herein. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as MLBFS may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interest in the Collateral granted to the MLBFS herein.

## Article II. THE LOAN

2.1 **Commitment.** Subject to the terms and conditions hereof, MLBFS hereby agrees to make the Loan to Customers, and Customers hereby agree to borrow the Loan from MLBFS. Except as otherwise provided in Section 3.1 hereof, the entire proceeds of the Loan will be disbursed by MLBFS out of the WCMA Line of Credit either directly to the applicable third party or parties on account of the Loan Purpose or to reimburse Customers for amounts directly expended by them for the Loan Purpose; all as directed by Customers in a Closing Certificate to be executed and delivered to MLBFS prior to the date of funding.

2.2 **Conditions of MLBFS' Obligation.** The Closing Date and MLBFS' obligations to activate the WCMA Line of Credit, as hereafter set forth, and make the Loan on the Closing Date are subject to the prior fulfillment of each of the following conditions: (a) not less than two Business Days prior to any requested funding date, MLBFS shall have received a Closing Certificate, duly executed by Customers, setting forth, among other things, the amount of the Loan and the method of payment and payee(s) of the proceeds thereof; (b) after giving effect to the Loan, the WCMA Loan Balance will not exceed either the Maximum WCMA Line of Credit or the Loan Amount; (c) the Commitment Expiration Date shall not then have occurred; and (d) each of the General Funding Conditions shall then have been met or satisfied to the reasonable satisfaction of MLBFS.

2.3 **Commitment Fee.** In consideration of the agreement by MLBFS to extend the Loan and any Subsequent WCMA Loans to Customers in accordance with and subject to the terms hereof, Customers have paid or shall, on or before the Closing Date pay, the Commitment Fee to MLBFS. Customers acknowledge and agree that the Commitment Fee has been fully earned by MLBFS, and that it will not under any circumstances be refundable.

2.4 **Use of Loan Proceeds.** Unless otherwise agreed by MLBFS in writing, the proceeds of the Loan shall be used solely for the Loan Purpose. The Proceeds of each Subsequent WCMA Loan initiated by any Customer shall be used by Customer solely for working capital in the ordinary course of their respective businesses to include tax obligations, or, with the prior written consent of MLBFS, for other lawful business purposes of Customer not prohibited hereby. Customers agree that under no circumstances will the proceeds of the Loan or any Subsequent WCMA Loan be used: (i) for personal, family or household purposes of any person whatsoever, or (ii) to purchase, carry or trade in securities, or repay debt incurred to purchase, carry or trade in securities, whether in or in connection with the WCMA Account, another account of any Customer with MLPF&S or an account of any Customer at any other broker or dealer in securities, or (iii) unless otherwise consented to in writing by MLBFS, to pay any amount to Merrill

Lynch and Co., Inc. or any of its subsidiaries, other than Merrill Lynch Bank USA, Merrill Lynch Bank & Trust Co. or any subsidiary of either of them (including MLBFS and Merrill Lynch Credit Corporation).

#### Article III. THE WCMA LINE OF CREDIT

**3.1 Activation of the WCMA Line of Credit.** Subject to the terms and conditions hereof, on the Closing Date MLBFS will activate a WCMA Line of Credit for Customers in the Loan Amount. The Loan will be funded out of the WCMA Line of Credit immediately after such activation (or, if and to the extent otherwise expressly contemplated in the definition of Loan Purpose or otherwise directed in the Closing Certificate and hereafter expressly agreed by MLBFS, all or part of the Loan may be made available as a WCMA Line of Credit and funded by Customers.)

**3.2 Subsequent WCMA Loans.** Subject to the terms and conditions hereof, during the period from and after the Closing Date to the Termination Date: (a) Customers may repay the WCMA Loan Balance in whole or in part at any time without premium or penalty, and Account Holder may request a re-borrowing of amounts repaid on a revolving basis, and (b) in addition to Subsequent WCMA Loans made automatically to pay accrued interest, as hereafter provided, MLBFS will make such Subsequent WCMA Loans as Account Holder may from time to time request or be deemed to have requested in accordance with the terms hereof. Account Holder may request Subsequent WCMA Loans by use of WCMA Checks, FTS, Visa® charges, wire transfers, or such other means of access to the WCMA Line of Credit as may be permitted by MLBFS from time to time; it being understood that so long as the WCMA Line of Credit shall be in effect, any charge or debit to the WCMA Account which but for the WCMA Line of Credit would under the terms of the WCMA Agreement result in an overdraft, shall be deemed a request by Account Holder for a Subsequent WCMA Loan.

**3.3 Conditions of Subsequent WCMA Loans.** Notwithstanding the foregoing, MLBFS shall not be obligated to make any Subsequent WCMA Loan, and may without notice refuse to honor any such request by Account Holder, if at the time of receipt by MLBFS of Account Holder's request: (a) the making of such Subsequent WCMA Loan would cause the Maximum WCMA Line of Credit, as reduced pursuant to the provisions of Section 3.6 hereof, to be exceeded; or (b) the Termination Date shall have occurred; or (c) an event shall have occurred and be continuing which shall have caused any of the General Funding Conditions to not then be met or satisfied to the reasonable satisfaction of MLBFS. The making by MLBFS of any Subsequent WCMA Loan (including, without limitation, the making of a Subsequent WCMA Loan to pay accrued interest or late charges, as hereafter provided) at a time when any one or more of said conditions shall not have been met shall not in any event be construed as a waiver of said condition or conditions or of any Default, and shall not prevent MLBFS at any time thereafter while any condition shall not have been met from refusing to honor any request by Account Holder for a Subsequent WCMA Loan.

**3.4 WCMA Note.** Customers hereby promise to pay to the order of MLBFS, at the times and in the manner set forth in this Loan Agreement, or in such other manner and at such place as MLBFS may hereafter designate in writing: (a) the WCMA Loan Balance; (b) interest at the Interest Rate on the outstanding WCMA Loan Balance (computed for the actual number of days elapsed on the basis of a year consisting of 360 days), from and including the date on which the Loan is made until the date of payment of all WCMA Loans in full; and (c) on demand, all other sums payable pursuant to this Loan Agreement, including, but not limited to, any late charges. Except as otherwise expressly set forth herein, each Customer hereby waives presentment, demand for payment, protest and notice of protest, notice of dishonor, notice of acceleration, notice of intent to accelerate and all other notices and formalities in connection with this WCMA Note and this Loan Agreement.

**3.5 Interest.** (a) An amount equal to accrued interest on the daily WCMA Loan Balance shall be payable by Customers monthly on each Interest Due Date, commencing with the first Interest Due Date after the Closing Date shall occur. Unless otherwise hereafter directed in writing by MLBFS on or after the Termination Date, such interest will be automatically charged to the WCMA Account on the applicable Interest Due Date, and, to the extent not paid with free credit balances or the proceeds of sales of any Money Accounts then in the WCMA Account, as hereafter provided, such interest will be paid by a Subsequent WCMA Loan and added to the WCMA Loan Balance. All interest shall be computed for the actual number of days elapsed on the basis of a year consisting of 360 days.

(b) Upon the occurrence and during the continuance of any Default, but without limiting the rights and remedies otherwise available to MLBFS hereunder or waiving such Default, the interest payable by Customers hereunder shall at the option of MLBFS accrue and be payable at the Default Rate. The Default Rate, once implemented, shall continue to apply to the Obligations under this Loan Agreement and be payable by Customer until the date MLBFS gives written notice that such Default has been cured to the satisfaction of MLBFS.

(c) Notwithstanding any provision to the contrary in any of the Loan Documents, no provision of the Loan Documents shall require the payment or permit the collection of Excess Interest. If any Excess Interest is provided for, or is adjudicated as being provided for, in the Loan Documents, then: (i) Customers shall not be obligated to pay any Excess Interest; and (ii) any Excess Interest that MLBFS may have received hereunder or under any of the Loan Documents shall, at the option of MLBFS, be either applied as a credit against the then unpaid WCMA Loan Balance, or refunded to the payor thereof.

**3.6 Periodic Reduction of Maximum WCMA Line of Credit.** Commencing on the last Business Day of the first full calendar month following the Closing Date, and continuing on the last Business Day of each calendar month thereafter to and including the last Business Day of the eighty-third (83rd) such calendar month, the Maximum WCMA Line of Credit shall be reduced by an amount equal to one-eighty-fourth (1/84th) of the Loan Amount per month. Unless the WCMA Line of Credit shall have been earlier terminated pursuant to the terms hereof, on the last Business Day of the eighty-fourth (84th) calendar month following the Closing Date, the WCMA Line of Credit shall, without further action of either of the parties hereto, be terminated. Customers shall pay to MLBFS the entire WCMA Loan Balance, if any, and all other Obligations, and the WCMA Account, at the option of Account Holder, will either be converted to a WCMA Cash Account (subject to any requirements of MLPF&S) or terminated. No failure or delay on the part of MLBFS in entering into the WCMA computer system any scheduled reduction in the Maximum WCMA Line of Credit pursuant to this Section shall have the effect of preventing or delaying such reduction.

**3.7 Mandatory Payments.** CUSTOMERS AGREE THAT THEY, JOINTLY AND COLLECTIVELY, WILL, WITHOUT DEMAND, INVOICING OR THE REQUEST OF MLBFS, FROM TIME TO TIME MAKE SUFFICIENT PAYMENTS ON ACCOUNT OF THE WCMA LOAN BALANCE TO ASSURE THAT THE WCMA LOAN BALANCE WILL NOT AT ANY TIME EXCEED THE MAXIMUM WCMA LINE OF CREDIT, AS REDUCED EACH MONTH PURSUANT TO SECTION 3.6 HEREOF.

**3.8 Method of Making Payments.** All payments required or permitted to be made pursuant to this Loan Agreement shall be made in lawful money of the United States. Unless otherwise hereafter directed by MLBFS, such payments may be made by the delivery of checks (other than WCMA Checks), or by means of FTS or wire transfer of funds (other than funds from the WCMA Line of Credit) to MLPF&S for credit to the WCMA Account. Payments to MLBFS from funds in the WCMA Account shall be deemed to be made by Customers upon the same basis and schedule as funds are made available for investment in the Money Accounts in accordance with the terms of the WCMA Agreement. The acceptance by or on behalf of MLBFS of a check or other payment for a lesser amount than shall be due from Customers, regardless of any endorsement or statement thereon or transmitted therewith, shall not be deemed an accord and satisfaction or anything other than a payment on account, and MLBFS or anyone acting on behalf of MLBFS may accept such check or other payment without prejudice to the rights of MLBFS to recover the balance actually due or to pursue any other remedy under this Loan Agreement or applicable law for such balance. All checks accepted by or on behalf of MLBFS in connection with this Loan Agreement are subject to final collection.

**3.9 Irrevocable Instructions to MLPF&S.** In order to minimize the WCMA Loan Balance, Account Holder hereby irrevocably authorizes and directs MLPF&S, effective on the Closing Date and continuing thereafter so long as this Loan Agreement shall be in effect: (a) to immediately and prior to application for any other purpose pay to MLBFS to the extent of any WCMA Loan Balance or other amounts payable by Customers hereunder all available free credit balances from time to time in the WCMA Account; and (b) if such available free credit balances are insufficient to pay the WCMA Loan Balance and such other amounts, and there are in the WCMA Account at any time any investments in Money Accounts (other than any investments constituting any Minimum Money Accounts Balance under the WCMA Directed Reserve Program), to immediately liquidate such investments and pay to MLBFS to the extent of any WCMA Loan Balance and such other amounts the available proceeds from the liquidation of any such Money Accounts.

**3.10 Late Charge.** Any payment or deposit required to be made by Customers pursuant to the Loan Documents not paid or made within ten (10) days of the applicable due date shall be subject to a late charge in an amount equal to the lesser of: (a) 5% of the overdue amount, or (b) the maximum amount permitted by applicable law. Such late charge shall be payable on demand, or, without demand, may in the sole discretion of MLBFS be paid by a Subsequent WCMA Loan and added to the WCMA Loan Balance in the same manner as provided herein for accrued interest with respect to the WCMA Line of Credit.

**3.11 Prepayment.** Customers may prepay the Loan and any Subsequent WCMA Loan at any time in whole or in part without premium or penalty.

**3.12 Option of Customer to Terminate.** Customers will have the option to terminate the WCMA Line of Credit at any time upon written notice to MLBFS. Concurrently with any such termination, Customers shall pay to MLBFS the entire WCMA Loan Balance and all other Obligations.

**3.13 Limitation of Liability.** MLBFS shall not be responsible, and shall have no liability to any Customer or any other party, for any delay or failure of MLBFS to honor any request of any Customer for a WCMA Loan or any other act or omission of MLBFS, MLPF&S or any of their affiliates due to or resulting from any system failure, error or delay in posting or other clerical error, loss of power, fire, Act of God or other cause beyond the reasonable control of MLBFS, MLPF&S or any of their affiliates unless directly arising out of the willful wrongful act or active gross negligence of MLBFS. In no event shall MLBFS be liable to any Customer or any other party for any incidental or consequential damages arising from any act or omission by MLBFS, MLPF&S or any of their affiliates in connection with the WCMA Line of Credit or this Loan Agreement.

**3.14 Statements.** MLPF&S will include in each monthly statement it issues under the WCMA Program information with respect to WCMA Loans and the WCMA Loan Balance. Any questions that Customers may have with respect to such information or the Loan should be directed to MLBFS; and any questions with respect to any other matter in such statements or about or affecting the WCMA Program should be directed to MLPF&S.

#### Article IV. GENERAL PROVISIONS

##### 4.1 Representations and Warranties.

Each Customer represents and warrants to MLBFS that:

(a) **Organization and Existence.** Each Customer is a limited liability company and/or corporation, duly organized and validly existing in good standing under the laws of the State of Utah and is qualified to do business and in good standing in each other state where the nature of its respective business or the respective property owned by it make such qualification necessary.

(b) **Execution, Delivery and Performance.** Each Credit Party has the requisite power and authority to enter into and perform the Loan Documents. Each Customer holds all necessary permits, licenses, certificates of occupancy and other governmental authorizations and approvals required in order to own or operate such Customer's business. The execution, delivery and performance by each Customer of this Loan Agreement and by each of the other Credit Parties of such of the other Loan Documents to which it is a party: (i) have been duly authorized by all requisite action, (ii) do not and will not violate or conflict with any law, order or other governmental requirement, or any of the agreements, instruments or documents which formed or govern any of the Credit Parties, and (iii) do not and will not breach or violate any of the provisions of, and will not result in a default by any of the Credit Parties under, any other agreement, instrument or document to which it is a party or is subject.



(c) **Notices and Approvals.** Except as may have been given or obtained, no notice to or consent or approval of any governmental body or authority or other third party whatsoever (including, without limitation, any other creditor) is required in connection with the execution, delivery or performance by any Credit Party of such of the Loan Documents to which it is a party.

(d) **Enforceability.** The Loan Documents to which any Credit Party is a party are the respective legal, valid and binding obligations of such Credit Party, enforceable against it or them, as the case may be, in accordance with their respective terms, except as enforceability may be limited by bankruptcy and other similar laws affecting the rights of creditors generally or by general principles of equity.

(e) **Collateral.** Except for priorities afforded to any Permitted Liens: (i) Each Customer has good and marketable title to the Collateral, (ii) none of the Collateral is subject to any lien, encumbrance or security interest, and (iii) upon the filing of all Uniform Commercial Code financing statements authenticated or otherwise authorized by any Customer with respect to the Collateral in the appropriate jurisdiction(s) and/or the completion of any other action required by applicable law to perfect its liens and security interests, MLBFS will have valid and perfected first liens and security interests upon all of the Collateral.

(f) **Financial Statements.** Except as expressly set forth in any Customer's or any Business Guarantor's financial statements, all financial statements of each Customer and each Business Guarantor furnished to MLBFS have been prepared in conformity with generally accepted accounting principles, consistently applied, are true and correct in all material respects, and fairly present the financial condition of it as at such dates and the results of its operations for the periods then ended (subject, in the case of interim unaudited financial statements, to normal year-end adjustments); and since the most recent date covered by such financial statements, there has been no material adverse change in any such financial condition or operation. All financial statements furnished to MLBFS of any Guarantor other than a Business Guarantor are true and correct in all material respects and fairly represent such Guarantor's financial condition as of the date of such financial statements, and since the most recent date of such financial statements, there has been no material adverse change in such financial condition.

(g) **Litigation; Compliance With All Laws.** No litigation, arbitration, administrative or governmental proceedings are pending or, to the knowledge of any Customer, threatened against any Credit Party, which would, if adversely determined, materially and adversely affect (i) such Credit Party's interest in the Collateral or the liens and security interests of MLBFS hereunder or under any of the Loan Documents, or (ii) the financial condition of such Credit Party or its continued operations. Each Credit Party is in compliance in all material respects with all laws, regulations, requirements and approvals applicable to such Credit Party.

(h) **Tax Returns.** All federal, state and local tax returns, reports and statements required to be filed by any Credit Party have been filed with the appropriate governmental agencies and all taxes due and payable by any Credit Party have been timely paid (except to the extent that any such failure to file or pay will not materially and adversely affect (i) either the liens and security interests of MLBFS hereunder or under any of the Loan Documents, (ii) the financial condition of any Credit Party or (iii) its continued operations).

(i) **Collateral Location.** All of the tangible Collateral is located at a Location of Tangible Collateral.

(j) **No Default.** No "Default" or "Event of Default" (each as defined in this Loan Agreement or any of the other Loan Documents) has occurred and is continuing.

(k) **No Outside Broker.** Except for employees of MLBFS, MLPF&S or one of their affiliates, no Customer has in connection with the transactions contemplated hereby directly or indirectly engaged or dealt with, and was not introduced or referred to MLBFS by, any broker or other loan arranger.

Each of the foregoing representations and warranties: (i) has been and will be relied upon as an inducement to MLBFS to make any WCMA Loan, and (ii) is continuing and shall be deemed remade by Customer on the Closing Date, and concurrently with each request by each Customer for a Subsequent WCMA Loan.

#### 4.2 Financial and Other Information.

(a) Customers shall furnish or cause to be furnished to MLBFS during the term of this Loan Agreement all of the following:

(i) **Annual Financial Statements.** Within 120 days after the close of each fiscal year of Account Holder, a copy of the annual audited consolidated financial statements of all Customers, including in reasonable detail, a balance sheet and statement of retained earnings as at the close of such fiscal year and statements of profit and loss and cash flow for such fiscal year;

(ii) **Annual Certificate of Compliance.** Within 120 days after the close of each calendar year, a Certificate of Compliance, duly executed by the president, chief financial officer or chief executive officer of the Customer, in the form of Exhibit B attached hereto, or such other form as reasonably required by MLBFS from time to time;

(iii) **Interim Financial Statements.** Within 45 days after the close of each fiscal quarter of Account Holder, a copy of the interim consolidating financial statements of all Customers for such fiscal quarter (including in reasonable detail both a balance sheet as of the close of such fiscal period, and statement of profit and loss for the applicable fiscal period);

(iv) **A/R Agings.** Within 15 days after the close of each fiscal month of Account Holder, a copy of the Accounts Receivable Aging of Account Holder as of the end of such fiscal month;

(v) **Personal Financial Statements.** Not later than 120 days after the close of each fiscal year of Account Holder, a current signed financial statement of each individual Guarantor;

(vi) **Bank Statement.** Not later than 60 days after the close of each semi-annual period of Account Holder, a personal bank statement of the Individual Guarantor; and

(vii) **Other Information.** Such other information as MLBFS may from time to time reasonably request relating to Customer, any Credit Party or the Collateral.

(b) **General Agreements With Respect to Financial Information.** Customers agree that except as otherwise specified herein or otherwise agreed to in writing by MLBFS: (i) all annual financial statements required to be furnished by any Customer to MLBFS hereunder will be prepared by either the current independent accountants for Customers or other independent accountants reasonably acceptable to MLBFS; and (ii) all other financial information required to be furnished by any Customer to MLBFS hereunder will be certified as correct in all material respects by the party who has prepared such information, and, in the case of internally prepared information with respect to any Customer, certified as correct by its chief financial officer.

**4.3 Other Covenants.** Each Customer further covenants and agrees during the term of this Loan Agreement that:

(a) **Financial Records; Inspection.** Each Credit Party (other than any Individual Guarantor) will: (i) maintain at its principal place of business complete and accurate books and records, and maintain all of its financial records in a manner consistent with the financial statements heretofore furnished to MLBFS, or prepared on such other basis as may be approved in writing by MLBFS; and (ii) permit MLBFS or its duly authorized representatives, upon reasonable notice and at reasonable times, to inspect its properties (both real and personal), operations, books and records.

(b) **Taxes.** Each Credit Party will pay when due all taxes, assessments and other governmental charges, howsoever designated, and all other liabilities and obligations, except to the extent that any such failure to file or pay will not materially and adversely affect either the liens and security interests of MLBFS hereunder or under any of the Loan Documents, the financial condition of any Credit Party or its continued operations.

(c) **Compliance With Laws and Agreements.** No Credit Party will violate (i) any law, regulation or other governmental requirement, any judgment or order of any court or governmental agency or authority; (ii) any agreement, instrument or document which is material to its operations or to the operation or use of any Collateral, in each case as contemplated by the Loan Documents; or (iii) any agreement, instrument or document to which it is a party or by which it is bound, if any such violation will materially and adversely affect either the liens and security interests of MLBFS hereunder or under any of the Loan Documents, the financial condition of any Credit Party, or its continued operations.

(d) **No Use of Merrill Lynch Name.** No Credit Party will directly or indirectly publish, disclose or otherwise use in any advertising or promotional material, or press release or interview, the name, logo or any trademark of MLBFS, MLPF&S, Merrill Lynch and Co., Incorporated or any of their affiliates.

(e) **Notification By Customer.** Each Customer shall provide MLBFS with prompt written notification of: (i) any Default; (ii) any material adverse change in the business, financial condition or operations of any Credit Party; (iii) any information which indicates that any financial statements of any Credit Party fail in any material respect to present fairly the financial condition and results of operations purported to be presented in such statements; (iv) any threatened or pending litigation involving any Credit Party; (v) any casualty loss, attachment, lien, judicial process, encumbrance or claim affecting or involving \$25,000 or more of any Collateral; and (vi) any change in any Customer's outside accountants. Each notification by any Customer pursuant hereto shall specify the event or information causing such notification, and, to the extent applicable, shall specify the steps being taken to rectify or remedy such event or information.

(f) **Entity Organization.** Each Credit Party which is an entity will (i) remain (A) validly existing and in good standing in the state of its organization and (B) qualified to do business and in good standing in each other state where the nature of its business or the property owned by it make such qualification necessary, and (ii) maintain all governmental permits, licenses and authorizations. Each Customer shall give MLBFS not less than 30 days prior written notice of any change in name (including any fictitious name) or chief executive office, place of business, or as applicable, the principal residence of any Credit Party.

(g) **Merger, Change in Business.** Except upon the prior written consent of MLBFS, neither Customer shall not cause or permit any Credit Party to (i) be a party to any merger or consolidation with, or purchase or otherwise acquire all or substantially all of the assets of, or any material stock, partnership, joint venture or other equity interest in, any Person, or sell, transfer or lease all or any substantial part of its assets; (ii) engage in any material business substantially different from its business in effect as of the date of application by any Customer for credit from MLBFS, or cease operating any such material business; or (iii) cause or permit any other Person to assume or succeed to any material business or operations of such Credit Party.

(h) **No Acquisition Of Assets Or Stock Of Any Kind.** Without limiting any other provision hereof, no Customer shall without the prior written consent of MLBFS directly or indirectly acquire the assets or stock of any other entity.

(i) **Minimum Tangible Net Worth.** Commencing March 31, 2003, Customers' "Tangible Net Worth" shall at all times exceed \$10,000,000.00. Commencing April 1, 2003 and continuing through October 31, 2003, Customers' "Tangible Net Worth" shall at all times exceed \$10,500,000.00. Commencing November 1, 2003 and continuing through December 31, 2003 and continuing all times thereafter, Customers' "Tangible Net Worth" shall at all times exceed \$11,000,000.00. For the purposes hereof, the term "Tangible Net Worth" shall mean Customers' net worth as shown on Customers' regular financial statements prepared in accordance with GAAP, but excluding an amount equal to: (i) any Intangible Assets, and (ii) any amounts now or hereafter directly or indirectly owing to Customers by officers, shareholders or affiliates of Customers. "Intangible Assets" shall mean the total amount of goodwill, patents, trade names, trade or service marks, copyrights, experimental expense, organization expense, unamortized debt discount and expense, the excess of cost of shares acquired over book value of related assets, and such other assets as are properly classified as "intangible assets" of the Customers determined in accordance with GAAP.

(j) **Total Liabilities To Tangible Net Worth.** Account Holder's "Leverage Ratio" shall not at any time exceed 1.25 to 1. For purposes hereof, "Leverage Ratio" shall mean the ratio of Customer's total liabilities to Customer's Tangible Net Worth. The term "Tangible Net Worth" shall mean Customer's net worth

as shown on Customer's regular financial statements prepared in accordance with GAAP, but excluding an amount equal to: (i) any Intangible Assets, and (ii) any amounts now or hereafter directly or indirectly owing to Customer by officers, shareholders or affiliates of Customer. "Intangible Assets" shall mean the total amount of goodwill, patents, trade names, trade or service marks, copyrights, experimental expense, organization expense, unamortized debt discount and expense, the excess of cost of shares acquired over book value of related assets, and such other assets as are properly classified as "intangible assets" of the Customer determined in accordance with GAAP.

(k) **Retirement Of Debt With Asset Sale Proceeds.** Customers shall use 50% of after tax proceeds resulting from any asset sale to pay down term debt to MLBFS.

(l) **Fixed Charge Covenant Ratio.** The consolidated Fixed Charge Coverage Ratio of Customer shall not for any period set forth below exceed the ratio set forth below opposite such period:

Period	Ratio
Activation Date through 3/31/03	1.10 to 1
4/01/03 through 6/30/03	1.20 to 1
7/01/03 through 12/31/03	1.25 to 1

For purposes hereof, "Fixed Charge Coverage Ratio" shall mean the ratio of: (a) income before interest (including payments in the nature of interest under capital leases), taxes, depreciation, amortization, and other non-cash charges, minus any internally financed capital expenditures, to (b) the sum of the aggregate principal and interest paid or accrued, the aggregate rental under capital leases paid or accrued, any net dividends and other distributions paid or payable to shareholders, and taxes paid in cash less any recurring capital contributions and/or principal reduction of shareholder's notes receivable; all as determined on a trailing 12-month basis as set forth in Customer's regular quarter financial statements prepared in accordance with GAAP.

(m) **No Guaranty Of Debt.** Customers shall not guaranty debt to any other institution or individual in an amount greater than \$250,000.00.

(n) **Negative Pledge of Real Estate.** Except upon the prior written consent of MLBFS, Customer shall not directly or indirectly sell, assign, transfer, mortgage or otherwise encumber to anyone other than MLBFS any real property, now owned or hereafter acquired.

#### 4.4 Collateral

(a) **Pledge of Collateral.** To secure payment and performance of the Obligations, each Customer hereby pledges, assigns, transfers and sets over to MLBFS, and grants to MLBFS first liens and security interests in and upon all of the Collateral, subject only to priorities afforded to Permitted Liens.

(b) **Liens.** Except upon the prior written consent of MLBFS, no Customer shall not create or permit to exist any lien, encumbrance or security interest upon or with respect to any Collateral now owned or hereafter acquired other than Permitted Liens.

(c) **Performance of Obligations.** Each Customer shall perform all of its obligations owing on account of or with respect to the Collateral; it being understood that nothing herein, and no action or inaction by MLBFS, under this Loan Agreement or otherwise, shall be deemed an assumption by MLBFS of any of said obligations of any Customer.

(d) **Sales and Collections.** No Customer shall sell, transfer or otherwise dispose of any Collateral, except that so long as no Event of Default shall have occurred and be continuing, each Customer may in the ordinary course of its business: (i) sell any inventory normally held by such Customer for sale, (ii) use or consume any materials and supplies normally held by such Customer for use or consumption, and (iii) collect all of its Accounts.

(e) **Account Schedules.** Upon the request of MLBFS, which may be made from time to time, each Customer shall deliver to MLBFS, in addition to the other information required hereunder, a schedule identifying, for each Account and all Chattel Paper subject to MLBFS' security interests hereunder, each Account Debtor by name and address and amount, invoice or contract number and date of each invoice or contract. Each Customer shall furnish to MLBFS such additional information with respect to the Collateral, and amounts received by any Customer as proceeds of any of the Collateral, as MLBFS may from time to time reasonably request.

(f) **Alterations and Maintenance.** Except upon the prior written consent of MLBFS, no Customer shall not make or permit any material alterations to any tangible Collateral which might materially reduce or impair its market value or utility. Each Customer shall at all times (i) keep the tangible Collateral in good condition and repair, reasonable wear and tear excepted, (ii) protect the Collateral against loss, damage or destruction, and (iii) pay or cause to be paid all obligations arising from the repair and maintenance of such Collateral, as well as all obligations with respect to each Location of Tangible Collateral (e.g., all obligations under any lease, mortgage or bailment agreement), except for any such obligations being contested by Customers in good faith by appropriate proceedings.

(g) **Location.** Except for movements required in the ordinary course of each Customer's business, each Customer shall give MLBFS 30 days' prior written notice of the placing at or movement of any tangible Collateral to any location other than a Location of Tangible Collateral. In no event shall any Customer cause or permit any material tangible Collateral to be removed from the United States without the express prior written consent of MLBFS. Each Customer will keep its books and records at its principal office address specified in the first paragraph of this Loan Agreement. No Customer will change the address where books and records are kept, or change its name or taxpayer identification number. Customers will place a legend acceptable to MLBFS on all chattel paper that is Collateral in the possession or control of any Customer from time to time indicating that MLBFS has a security interest therein.

(h) **Insurance.** Each Customer shall insure, as applicable, all of the tangible Collateral under a policy or policies of physical damage insurance for the full replacement value thereof against such perils as MLBFS shall reasonably require and also providing that losses will be payable to MLBFS as its interests may appear pursuant to a lender's or mortgagee's long form loss payable endorsement and containing such other provisions as may be reasonably required by MLBFS. Each Customer shall further provide and maintain a policy or policies of commercial general liability insurance naming MLBFS as an additional party insured. Each Customer and each Business Guarantor shall maintain such other insurance as may be required by law or is customarily maintained by companies in a similar business or otherwise reasonably required by MLBFS. All such insurance policies shall provide that MLBFS will receive not less than 10 days prior written notice of any cancellation, and shall otherwise be in form and amount and with an insurer or insurers reasonably acceptable to MLBFS. Each Customer shall furnish MLBFS with a copy or certificate of each such policy or policies and, prior to any expiration or cancellation, each renewal or replacement thereof.

(i) **Event of Loss.** Customers shall at their joint and several expense promptly repair all repairable damage to any tangible Collateral. In the event that there is an Event of Loss and the affected Collateral had a value prior to such Event of Loss of \$25,000.00 or more, then, on or before the first to occur of (i) 90 days after the occurrence of such Event of Loss, or (ii) 10 Business Days after the date on which either any Customer or MLBFS shall receive any proceeds of insurance on account of such Event of Loss, or any underwriter of insurance on such Collateral shall advise either any Customer or MLBFS that it disclaims liability in respect of such Event of Loss, Customer shall, at Customer's option, either replace the Collateral subject to such Event of Loss with comparable Collateral free of all liens other than Permitted Liens (in which event any or all of the Customers shall be entitled to utilize the proceeds of insurance on account of such Event of Loss for such purpose, and may retain any excess proceeds of such insurance), or permanently prepay the Obligations by an amount equal to the actual cash value of such Collateral as determined by either the insurance company's payment (plus any applicable deductible) or, in absence of insurance company payment, as reasonably determined by MLBFS; it being further understood that any such permanent prepayment shall cause an immediate permanent reduction in the Maximum WCMA Line of Credit in the amount of such prepayment and shall not reduce the amount of any future reductions in the Maximum WCMA Line of Credit that may be required hereunder. Notwithstanding the foregoing, if at the time of occurrence of such Event of Loss or any time thereafter prior to replacement or line reduction, as aforesaid, an Event of Default shall have occurred and be continuing hereunder, then MLBFS may at its sole option, exercisable at any time while such Event of Default shall be continuing, require Customers to either replace such Collateral or prepay the Obligations and reduce the Maximum WCMA Line of Credit, as aforesaid.

(j) **Notice of Certain Events.** Account Holder shall give MLBFS immediate notice of any attachment, lien, judicial process, encumbrance or claim affecting or involving \$25,000.00 or more of the Collateral.

(k) **Indemnification.** Each Customer shall indemnify, defend and save MLBFS harmless from and against any and all claims, liabilities, losses, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) of any nature whatsoever which may be asserted against or incurred by MLBFS arising out of or in any manner occasioned by (i) the ownership, collection, possession, use or operation of any Collateral, or (ii) any failure by any Customer to perform any of its obligations hereunder; excluding, however, from said indemnity any such claims, liabilities, etc. arising directly out of the willful wrongful act or active gross negligence of MLBFS. This indemnity shall survive the expiration or termination of this Loan Agreement as to all matters arising or accruing prior to such expiration or termination.

#### 4.5 Events of Default.

The occurrence of any of the following events shall constitute an "Event of Default" under this Loan Agreement:

(a) **Failure to Pay.** (i) Any Customer shall fail to deposit into the WCMA Account an amount sufficient to assure that the WCMA Loan Balance does not exceed the Maximum WCMA Line of Credit (ii) any Customer shall fail to pay to MLBFS or deposit into the WCMA Account when due any other amount owing or required to be paid or deposited by any Customer under the Loan Documents, or (iii) any Customer shall fail to pay when due any other Obligations; and any such failure as described in this subparagraph shall continue for more than five (5) Business Days after written notice thereof shall have been given by MLBFS to any Customer.

(b) **Failure to Perform.** Any Credit Party shall default in the performance or observance of any covenant or agreement on its part to be performed or observed under any of the Loan Documents (not constituting an Event of Default under any other clause of this Section), and such default shall continue unremedied for ten (10) Business Days (i) after written notice thereof shall have been given by MLBFS to any Customer, or (ii) from any Customer's receipt of any notice or knowledge of such default from any other source.

(c) **Breach of Warranty.** Any representation or warranty made by any Credit Party contained in any of the Loan Documents shall at any time prove to have been incorrect in any material respect when made.

(d) **Default Under Other ML Agreement.** A default or event of default by any Credit Party shall occur under the terms of any other agreement, instrument or document with or intended for the benefit of MLBFS, MLPF&S or any of their affiliates, and any required notice shall have been given and required passage of time shall have elapsed, or the WCMA Agreement shall be terminated for any reason.

(e) **Bankruptcy Event.** Any Bankruptcy Event shall occur.

(f) **Material Impairment.** Any event shall occur which shall reasonably cause MLBFS to in good faith believe that the prospect of full payment or performance by the Credit Parties of any of their respective liabilities or obligations under any of the Loan Documents has been materially impaired. The existence of such a material impairment shall be determined in a manner consistent with the intent of Section 1-208 of the UCC.

(g) **Default Under Other Agreements.** Any event shall occur which results in any default of any material agreement involving any Credit Party or any agreement evidencing any indebtedness of any Credit Party of \$100,000.00 or more.

(h) **Collateral Impairment.** The loss, theft or destruction of any Collateral, the occurrence of any material deterioration or impairment of any Collateral or any material decline or depreciation in the value or market price thereof (whether actual or reasonably anticipated), which causes any Collateral, in the sole opinion of MLBFS, to become unsatisfactory as to value or character, or any levy, attachment, seizure or confiscation of the Collateral which is not released within ten (10) Business Days.

(i) **Contested Obligation.** (i) Any of the Loan Documents shall for any reason cease to be, or are asserted by any Credit Party not to be a legal, valid and binding obligations of any Credit Party, enforceable in accordance with their terms; or (ii) the validity, perfection or priority of MLBFS' first lien and security interest on any of the Collateral is contested by any Person; or (iii) any Credit Party shall or shall attempt to repudiate, revoke, contest or dispute, in whole or in part, such Credit Party's obligations under any Loan Document.

(j) **Judgments.** A judgment shall be entered against any Credit Party in excess of \$25,000 and the judgment is not paid in full and discharged, or stayed and bonded to the satisfaction of MLBFS.

(k) **Change in Control/Change in Management.** (i) Any direct or indirect sale, conveyance, assignment or other transfer of or grant of a security interest in any ownership interest of any Credit Party which results, or if any rights related thereto were exercised would result, in any change in the identity of the individuals or entities in control of any Credit Party; or (ii) the owner(s) of the controlling equity interest of any Customer on the date hereof shall cease to own and control such Credit Party; or (iii) the Person (or a replacement who is satisfactory to MLBFS in its sole discretion) who is the chief executive officer or holds such similar position, or any senior manager of such Credit Party on the date hereof shall for any reason cease to be the chief executive officer or senior manager of such Credit Party.

(l) **Withdrawal, Death, etc.** The incapacity, death, withdrawal, dissolution, or the filing of dissolution of: (i) any Credit Party; or (ii) any controlling shareholder, partner, or member of any Credit Party.

#### 4.6 Remedies.

(a) **Remedies Upon Default.** Upon the occurrence and during the continuance of any Event of Default, MLBFS may at its sole option do any one or more or all of the following, at such time and in such order as MLBFS may in its sole discretion choose:

(i) **Termination.** MLBFS may without notice terminate its obligation to extend any credit to or for the benefit of any Customer (it being understood that upon the occurrence of any Bankruptcy Event all such obligations shall automatically terminate without any action on the part of MLBFS).

(ii) **Acceleration.** MLBFS may declare the WCMA Loan Balance and all other Obligations to be forthwith due and payable, whereupon all such amounts shall be immediately due and payable, without presentment, demand for payment, protest and notice of protest, notice of dishonor, notice of acceleration, notice of intent to accelerate or other notice or formality of any kind, all of which are hereby expressly waived; provided, however, that upon the occurrence of any Bankruptcy Event the WCMA Loan Balance and other Obligations shall automatically become due and payable without any action on the part of MLBFS.

(iii) **Exercise Other Rights.** MLBFS may exercise any or all of the remedies of a secured party under applicable law and in equity, including, but not limited to, the UCC, and any or all of its other rights and remedies under the Loan Documents.

(iv) **Possession.** MLBFS may require any Customer to make the Collateral and the records pertaining to the Collateral available to MLBFS at a place designated by MLBFS which is reasonably convenient to any Customer, or may take possession of the Collateral and the records pertaining to the Collateral without the use of any judicial process and without any prior notice to any Customer.

(v) **Sale.** MLBFS may sell any or all of the Collateral at public or private sale upon such terms and conditions as MLBFS may reasonably deem proper, whether for cash, on credit, or for future delivery, in bulk or in lots. MLBFS may purchase any Collateral at any such sale free of any Customer's right of redemption, if any, which Customers expressly waives to the extent not prohibited by applicable law. The net proceeds of any such public or private sale and all other amounts actually collected or received by MLBFS pursuant hereto, after deducting all costs and expenses incurred at any time in the collection of the Obligations and in the protection, collection and sale of the Collateral, will be applied to the payment of the Obligations, with any remaining proceeds paid to any Customer or whoever else may be entitled thereto, and with Customers and each Guarantor remaining jointly and severally liable for any amount remaining unpaid after such application.

(vi) **Delivery of Cash, Checks, Etc.** MLBFS may require any Customer to forthwith upon receipt, transmit and deliver to MLBFS in the form received, all cash, checks, drafts and other instruments for the payment of money (properly endorsed, where required, so that such items may be collected by MLBFS) which may be received by any Customer at any time in full or partial payment of any Collateral, and require that any Customer not commingle any such items which may be so received by any Customer with any other of its funds or property but instead hold them separate and apart and in trust for MLBFS until delivery is made to MLBFS.

(vii) **Notification of Account Debtors.** MLBFS may notify any Account Debtor that its Account or Chattel Paper has been assigned to MLBFS and direct such account debtor to make payment directly to MLBFS of all amounts due or becoming due with respect to such Account or Chattel Paper; and MLBFS may enforce payment and collect, by legal proceedings or otherwise, such Account or Chattel Paper.

(viii) **Control of Collateral.** MLBFS may otherwise take control in any lawful manner of any cash or non-cash items of payment or proceeds of Collateral and of any rejected, returned, stopped in transit or repossessed goods included in the Collateral and endorse any Customer's name on any item of payment or proceeds of the Collateral.

(b) **Set-Off.** MLBFS shall have the further right upon the occurrence and during the continuance of an Event of Default to set-off, appropriate and apply toward payment of any of the Obligations, in such order of application as MLBFS may from time to time and at any time elect, any cash, credit, deposits, accounts, financial assets, investment property, securities and any other property of any Customer which is in transit to or in the possession, custody or control of MLBFS, MLPF&S or any agent, bailee, or affiliate of MLBFS or MLPF&S. Each Customer hereby collaterally assigns and grants to MLBFS a continuing security interest in all such property as Collateral and as additional security for the Obligations. Upon the occurrence and during the continuance of an Event of Default, MLBFS shall have all rights in such property available to collateral assignees and secured parties under all applicable laws, including, without limitation, the UCC.

(c) **Power of Attorney.** Effective upon the occurrence and during the continuance of an Event of Default, each Customer hereby irrevocably appoints MLBFS as its attorney-in-fact, with full power of substitution, in its place and stead and in its name or in the name of MLBFS, to from time to time in MLBFS' sole discretion take any action and to execute any instrument which MLBFS may deem necessary or advisable to accomplish the purposes of this Loan Agreement and the other Loan Documents, including, but not limited to, to receive, endorse and collect all checks, drafts and other instruments for the payment of money made payable to any Customer included in the Collateral. The powers of attorney granted to MLBFS in this Loan Agreement are coupled with an interest and are irrevocable until the Obligations have been indefeasibly paid in full and fully satisfied and all obligations of MLBFS under this Loan Agreement have been terminated.

(d) **Remedies are Severable and Cumulative.** All rights and remedies of MLBFS herein are severable and cumulative and in addition to all other rights and remedies available in the Loan Documents, at law or in equity, and any one or more of such rights and remedies may be exercised simultaneously or successively.

(e) **No Marshalling.** MLBFS shall be under no duty or obligation to (i) preserve, protect or marshal the Collateral; (ii) preserve or protect the rights of any Credit Party or any other Person claiming an interest in the Collateral; (iii) realize upon the Collateral in any particular order or manner; (iv) seek repayment of any Obligations from any particular source; (v) proceed or not proceed against any Credit Party pursuant to any guaranty or security agreement or against any Credit Party under the Loan Documents, with or without also realizing on the Collateral; (vi) permit any substitution or exchange of all or any part of the Collateral; or (vii) release any part of the Collateral from the Loan Agreement or any of the other Loan Documents, whether or not such substitution or release would leave MLBFS adequately secured.

(f) **Notices.** To the fullest extent permitted by applicable law, each Customer hereby irrevocably waives and releases MLBFS of and from any and all liabilities and penalties for failure of MLBFS to comply with any statutory or other requirement imposed upon MLBFS relating to notices of sale, holding of sale or reporting of any sale, and each Customer waives all rights of redemption or reinstatement from any such sale. Any notices required under applicable law shall be reasonably and properly given to any Customer if given by any of the methods provided herein at least 5 Business Days prior to taking action. MLBFS shall have the right to postpone or adjourn any sale or other disposition of Collateral at any time without giving notice of any such postponed or adjourned date. In the event MLBFS seeks to take possession of any or all of the Collateral by court process, each Customer further irrevocably waives to the fullest extent permitted by law any bonds and any surety or security relating thereto required by any statute, court rule or otherwise as an incident to such possession, and any demand for possession prior to the commencement of any suit or action.

#### 4.7 Certain Other Provisions

(a) **Account Holder as Agent.** (i) Each Customer hereby irrevocably appoints the Account Holder as its agent in connection with this Loan Agreement and the Loan Documents and authorizes and directs the Account Holder to exercise on its behalf such rights powers and discretions as are or may be called for on the part of each and everyone of the Customers hereunder and thereunder, including without limitation, the receipt of WCMA Loan proceeds, and the activation and borrowing under the WCMA Line of Credit through the operation, maintenance and use of the WCMA Account, together with all rights, powers and discretions incident thereto. Without limiting the generality of the foregoing, each Customer designates Account Holder as agent for receipt of notices and other communications under this Loan Agreement. The Account Holder accepts such appointment. Each Customer agrees that each right, power and discretion exercised by Account Holder on such Customer's behalf shall be deemed for all purposes to have been made by such Customer and shall be binding upon and enforceable against such Customer to the same extent as if the same had been exercised directly by such Customer.

(ii) Each Customer hereby acknowledges and confirms that it has established its own adequate means of obtaining from the other Customers and the Account Holder on a continuing basis all information desired by such Customer concerning the financial condition of the other Customers, and the status of the WCMA Line of Credit.

(b) **Joint and Several Liability of Customers.** (i) All Obligations shall be the joint and several obligations of Customers, and each Customer hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability for the Obligations, in consideration of the financial and other accommodations to be provided by MLBFS hereunder, and the undertakings of the other Customers to accept joint and several liability for the Obligations.

(ii) The joint and several liability of each Customer hereunder shall in no event be affected or impaired by any of the following, any of which may be done or omitted by MLBFS from time to time, without notice to or the consent of any Customer: (1) any extensions, forbearances, compromises or releases of any of the Obligations or any of MLBFS' rights hereunder or under any of the Loan Documents; (2) any acceptance by MLBFS of any collateral or security for, or guarantees of, any of the Obligations; (3) any failure, neglect or omission on the part of MLBFS to realize upon or protect any of the Obligations, or any collateral or security therefor, or to exercise any lien upon or right of appropriation of any moneys, credits or property of any Customer or any guarantor, possessed by or under the control of MLBFS or any of its affiliates, toward the liquidation or reduction of the Obligations; (4) any invalidity, irregularity or unenforceability of all or any part of the Obligations, of any collateral security for the Obligations, this Loan Agreement or any of the Loan Documents; (5) any application of payments or credits by MLBFS; (6) the granting of credit from time to time by MLBFS to any Customer in excess of the amount set forth

herein or in the Loan Documents; or (7) any other act of commission or omission of any kind or at any time upon the part of MLBFS or any of its affiliates or any of their respective employees or agents with respect to any matter whatsoever. MLBFS shall not be required at any time, as a condition of each Customer's obligations hereunder, to resort to payment from any other Customer or other persons or entities whatsoever, or any of their properties or estates, or resort to any collateral or pursue or exhaust any other rights or remedies whatsoever.

(iii) No release or discharge in whole or in part of a Customer from liability for any of the Obligations shall release or discharge any other Customer unless and until all of the Obligations shall have been indefeasibly fully paid and discharged. Each Customer expressly waives presentment, protest, demand, notice of dishonor or default, notice of acceptance of its joint and several liability, notice of advancement of funds by MLBFS hereunder or under any of the Loan Documents and all other notices and formalities to which any Customer might be entitled, by statute or otherwise, and, so long as there are any Obligations or MLBFS is committed to extend credit to any Customer, waives any right to revoke or terminate this Loan Agreement and any other Loan Documents without the express written consent of MLBFS.

(iv) So long as there are any Obligations, none of the Customers shall have any claim, remedy or right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim, right, or remedy of MLBFS against any other Customer or any security which MLBFS now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law, or otherwise.

#### 4.8 Miscellaneous.

(a) **Non-Waiver.** No failure or delay on the part of MLBFS in exercising any right, power or remedy pursuant to the Loan Documents shall operate as a waiver thereof, and no single or partial exercise of any such right, power or remedy shall preclude any other or further exercise thereof, or the exercise of any other right, power or remedy. Neither any waiver of any provision of any of the Loan Documents, nor any consent to any departure by any Customer therefrom, shall be effective unless the same shall be in writing and signed by MLBFS. Any waiver of any provision of any of the Loan Documents and any consent to any departure by any Customer from the terms thereof shall be effective only in the specific instance and for the specific purpose for which given. Except as otherwise expressly provided herein, no notice to or demand on any Customer shall in any case entitle any Customer to any other or further notice or demand in similar or other circumstances.

(b) **Disclosure.** Each Customer hereby irrevocably authorizes MLBFS and each of its affiliates, including without limitation MLPF&S, to at any time (whether or not an Event of Default shall have occurred) obtain from and disclose to each other any and all financial and other information about any Customer. In connection with said authorization, the parties recognize that in order to provide a WCMA Line of Credit certain information about each Customer is required to be made available on a computer network accessible by certain affiliates of MLBFS, including MLPF&S. Each Customer further irrevocably authorizes MLBFS to contact, investigate, inquire and obtain consumer reports, references and other information on any Customer from consumer reporting agencies and other credit reporting services, former or current creditors, and other persons and sources (including, without limitation, any Affiliate of MLBFS) and to provide to any references, consumer reporting agencies, credit reporting services, creditors and other persons and sources (including, without limitation, affiliates of MLBFS) all financial, credit and other information obtained by MLBFS relating to any Customer.

(c) **Communications.** Delivery of an agreement, instrument or other document may, at the discretion of MLBFS, be by electronic transmission. Except as required by law or otherwise provided herein or in a writing executed by the party to be bound, all notices, demands, requests, accountings, listings, statements, advices or other communications to be given under the Loan Documents shall be in writing and shall be served either personally, by deposit with a reputable overnight courier with charges prepaid, or by deposit in the United States mail by certified mail return receipt required. Notices may be addressed to each Customer as set forth at its address shown in the preamble hereto, or to any office to which billing or account statements are sent; to MLBFS at its address shown in the preamble hereto, or at such other address designated in writing by MLBFS. Any such communication shall be deemed to have been given upon, in the case of personal delivery the date of delivery, one Business Day after deposit with an overnight courier, two (2) Business Days after deposit in the United States by certified mail (return receipt required), or receipt of electronic transmission (which shall be presumed to be three hours after the time of transmission unless an error message is received by the sender), except that any notice of change of address shall not be effective until actually received.

(d) **Fees, Expenses and Taxes.** Customers shall pay or reimburse MLBFS for: (i) all UCC, real property or other filing, recording, and search fees and expenses incurred by MLBFS in connection with the verification, perfection or preservation of MLBFS' rights hereunder or in any Collateral or any other collateral for the Obligations; (ii) any and all stamp, transfer, mortgage, intangible, document, filing, recording and other taxes and fees payable or determined to be payable in connection with the borrowings hereunder or the execution, delivery, filing, and/or recording of the Loan Documents and any other instruments or documents provided for herein or delivered or to be delivered hereunder or in connection herewith; and (iii) all reasonable fees and out-of-pocket expenses (including, reasonable attorneys' fees and legal expenses) incurred by MLBFS in connection with the preparation, execution, administration, collection, enforcement, protection, waiver or amendment of this Loan Agreement, the other Loan Documents and such other instruments or documents, and the rights and remedies of MLBFS thereunder, and all other matters in connection therewith. Each Customer hereby authorizes MLBFS, at its option, to either cause any and all such fees, expenses and taxes to be paid with a WCMA Loan, or invoice any Customer therefore (in which event Customer shall pay all such fees, expenses and taxes within 5 Business Days after receipt of such invoice). The obligations of each Customer under this paragraph shall survive the expiration or termination of this Loan Agreement and the discharge of the other Obligations.

(e) **Right to Perform Obligations.** If any Customer shall fail to do any act or thing which it has covenanted to do under any of the Loan Documents or any representation or warranty on the part of Customer contained in the Loan Documents shall be breached, MLBFS may, in its sole discretion, after 5 Business Days written notice is sent to any Customer (or such lesser notice, including no notice, as is reasonable under the circumstances), do the same or cause it to be done or remedy any such breach, and may expend its funds for such purpose. Any and all reasonable amounts so expended by MLBFS shall be repayable to MLBFS by any Customer upon demand, with interest at the Interest Rate during the period from and including the date funds are so expended by MLBFS to the date of repayment, and all such amounts shall be additional Obligations. The payment or performance by MLBFS of any obligations of any

Customer hereunder shall not relieve any Customer of said obligations or of the consequences of having failed to pay or perform the same, and shall not waive or be deemed a cure of any Default.

(f) **Further Assurances.** Customers agree to do such further acts and things and to execute and deliver to MLBFS such additional agreements, instruments and documents as MLBFS may reasonably require or deem advisable to effectuate the purposes of the Loan Documents, to confirm the WCMA Loan Balance, or to establish, perfect and maintain MLBFS' security interests and liens upon the Collateral, including, but not limited to: (i) executing financing statements or amendments thereto when and as reasonably requested by MLBFS; and (ii) if in the reasonable judgment of MLBFS it is required by local law, causing the owners and/or mortgagees of the real property on which any Collateral may be located to execute and deliver to MLBFS waivers or subordinations reasonably satisfactory to MLBFS with respect to any rights in such Collateral.

(g) **Binding Effect.** The Loan Documents shall be binding upon, and shall inure to the benefit of MLBFS, Customers and their respective successors and assigns. MLBFS reserves the right, at any time while the Obligations remain outstanding, to sell, assign, syndicate or otherwise transfer or dispose of any or all of MLBFS' rights and interests under the Loan Documents. MLBFS also reserves the right at any time to pool the WCMA Loan with one or more other loans originated by MLBFS or any other Person, and to securitize or offer interests in such pool on whatever terms and conditions MLBFS shall determine. Each Customer consents to MLBFS releasing financial and other information regarding Credit Parties, the Collateral and the WCMA Loan in connection with any such sale, pooling, securitization or other offering. No Customer shall assign any of its rights or delegate any of its obligations under any of the Loan Documents without the prior written consent of MLBFS. Unless otherwise expressly agreed to in a writing signed by MLBFS, no such consent shall in any event relieve any Customer of any of its obligations under this Loan Agreement or any of the other Loan Documents.

(h) **Interpretation; Construction.** (i) Captions and section and paragraph headings in this Loan Agreement are inserted only as a matter of convenience, and shall not affect the interpretation hereof; (ii) no provision of this Loan Agreement shall be construed against a particular Person or in favor of another Person merely because of which Person (or its representative) drafted or supplied the wording for such provision; and (iii) where the context requires: (a) use of the singular or plural incorporates the other, and (b) pronouns and modifiers in the masculine, feminine or neuter gender shall be deemed to refer to or include the other genders.

(i) **Governing Law.** This Loan Agreement and, unless otherwise expressly provided therein, each of the Loan Documents, shall be governed in all respects by the laws of the State of Illinois, not including its conflict of law provisions.

(j) **Severability of Provisions.** Whenever possible, each provision of this Loan Agreement and the other Loan Documents shall be interpreted in such manner as to be effective and valid under applicable law. Any provision of the Loan Documents which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of the Loan Documents or affecting the validity or enforceability of such provision in any other jurisdiction.

(l) **Term.** This Loan Agreement shall become effective on the date accepted by MLBFS at its office in Chicago, Illinois, and, subject to the terms hereof, shall continue in effect so long thereafter as: (i) the WCMA Line of Credit shall be in effect, (ii) there shall be any moneys outstanding under this Loan Agreement, or (iii) there shall be any other Obligations outstanding. Each Customer hereby waives notice of acceptance of this Loan Agreement by MLBFS.

(m) **Exhibits.** The exhibits to this Loan Agreement are hereby incorporated and made a part hereof and are an integral part of this Loan Agreement

(n) **Counterparts.** This Loan Agreement may be executed in one or more counterparts which, when taken together, constitute one and the same agreement.

(n) **Jurisdiction; Waiver.** Each Customer acknowledges that this Loan Agreement is being accepted by MLBFS in partial consideration of MLBFS' right and option, in its sole discretion, to enforce the Loan Documents in either the State of Illinois or in any other jurisdiction where any Customer or any Collateral may be located. Each Customer irrevocably submits itself to jurisdiction in the State of Illinois and venue in any state or federal court in the County of Cook for such purposes, and each Customer waives any and all rights to contest said jurisdiction and venue and the convenience of any such forum, and any and all rights to remove such action from state to federal court. Each Customer further waives any rights to commence any action against MLBFS in any jurisdiction except in the County of Cook and State of Illinois. Each Customer agrees that all such service of process shall be made by mail or messenger directed to it in the same manner as provided for notices to any Customer in this Loan Agreement and that service so made shall be deemed to be completed upon the earlier of actual receipt or three (3) days after the same shall have been posted to any Customer or any Customer's agent. Nothing contained herein shall affect the right of MLBFS to serve legal process in any other manner permitted by law or affect the right of MLBFS to bring any action or proceeding against any Customer or its property in the courts of any other jurisdiction. Each Customer waives, to the extent permitted by law, any bond or surety or security upon such bond which might, but for this waiver, be required of MLBFS. Each Customer further waives the right to bring any non-compulsory counterclaims.

(o) **Jury Waiver.** MLBFS and Customers hereby each expressly waive any and all rights to a trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other party with respect to any matter relating to, arising out of or in any way connected with the Loan, the Obligations, this Loan Agreement, any of the other Loan Documents and/or any of the transactions which are the subject matter of this Loan Agreement.

(p) **Integration.** This Loan Agreement, together with the other Loan Documents, constitutes the entire understanding and represents the full and final agreement between the parties with respect to the subject matter hereof, and may not be contradicted by evidence of prior written agreements or prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements of the parties. Without limiting the foregoing, each Customer acknowledges that: (i) no promise or commitment has been made to it by MLBFS, MLPF&S or any of their respective employees, agents or representatives to make any WCMA Loan on any terms other than as expressly set forth herein, or to



make any other loan or otherwise extend any other credit to any Customer or any other party; and (ii) except as otherwise expressly provided herein, this Loan Agreement supersedes and replaces any and all proposals, letters of intent and approval and commitment letters from MLBFS to Customers, none of which shall be considered a Loan Document. No amendment or modification of any of the Loan Documents to which any Customer is a party shall be effective unless in a writing signed by both MLBFS and Customers.

(q) Survival. All representations, warranties, agreements and covenants contained in the Loan Documents shall survive the signing and delivery of the Loan Documents, and all of the waivers made and indemnification obligations undertaken by any Customer shall survive the termination, discharge or cancellation of the Loan Documents.

(r) Customer's Acknowledgments. Each Customer acknowledges that it: (i) has had ample opportunity to consult with counsel and such other parties as deemed advisable prior to signing and delivering this Loan Agreement and the other Loan Documents; (ii) understands the provisions of this Loan Agreement and the other Loan Documents, including all waivers contained therein; and (iii) signs and delivers this Loan Agreement and the other Loan Documents freely and voluntarily, without duress or coercion.

This Loan Agreement and the other Loan Documents are executed under seal and are intended to take effect as sealed instruments.

IN WITNESS WHEREOF, this Loan Agreement has been executed as of the day and year first above written.

THE WESTERN GROUP, L.C.

By: Snowy Range Cattle Company, Inc. f/k/a Arizona Central Railroad, Inc., Member

By: [Signature]  
Printed Name: David L. Durban  
Title: Pres

By: Southwestern Railroad, Inc. f/k/a Southwestern Railroad Company, Inc., Member

By: [Signature]  
Printed Name: David L. Durban  
Title: Pres

By: Wyoming Colorado Railroad, Inc. f/k/a Wyoming and Colorado Railroad Company, Inc., Member

By: [Signature]  
Printed Name: David L. Durban  
Title: Pres

By: Western Railroad Builders, Inc. f/k/a The Western Railroad Builders Corporation, Member

By: [Signature]  
Printed Name: David L. Durban  
Title: Pres

By: Cimarron Valley Railroad, L.C., its Member

By: Wyoming Colorado Railroad, Inc. f/k/a Wyoming and Colorado Railroad Company, Inc., Member

By: [Signature]  
Printed Name: David L. Durban  
Title: Pres

By: [Signature]  
David L. Durban, Member

By: Verde Canyon Railroad, L.C., Member  
 By: Snowy Range Cattle Company, Inc. f/k/a Arizona Central Railroad, Inc., Member

By: [Signature]  
 Printed Name: David L. Durbano  
 Title: Pres  
 By: [Signature]  
 David L. Durbano, Member

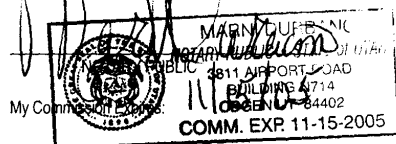
Accepted at Chicago, Illinois:  
 MERRILL LYNCH BUSINESS FINANCIAL  
 SERVICES, INC.

By: [Signature]

STATE OF UTAH }  
COUNTY OF WEBER } SS.

The foregoing instrument was acknowledged before me this 19 day of December, 2002, by DAVID L. DURBAN the  
PRES. of Wyoming Colorado Railroad, Inc., a corporation.

WITNESS my hand and official seal.



[SEAL]

**EXHIBIT A**

ATTACHED TO AND HEREBY MADE A PART OF WCMA LOAN AND SECURITY AGREEMENT NO. 69Q-07167 BETWEEN MERRILL LYNCH  
BUSINESS FINANCIAL SERVICES INC. AND THE WESTERN GROUP, LC

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**LOCOMOTIVES**

ENGINES	PLATE #	PURCHASED FROM
CVR 3004	64-M2-1058	NATIONAL RAILWAY
CVR 3014	62-0-55-R	NATIONAL RAILWAY
CVR 3024	72-M3-1526	NATIONAL RAILWAY
CVR 3020	62-C-34 R	NATIONAL RAILWAY
CVR 3023	63-A-23 R	NATIONAL RAILWAY
CVR 4227		NATIONAL RAILWAY
SW 6323	64-L2-1068	WESTERN RAILWAY SUPPLY
SW 2163	M-50-12422	ATSF RAILROAD
SW 25	63-E-32	PHELPS DODGE
SW 27	78-D3-1006	PHELPS DODGE
SW 28		PHELPS DODGE
SW 29	76-E3-1006	PHELPS DODGE
SW 30	65-J1-1120	PHELPS DODGE
SW 6798	76-A3-7508	WESTERN RAILWAY SUPPLY
SW 4291	5908	
SW 4292	52-C-107	
SW 2182		ATSF RAILROAD
SW 2164	51-E-3	ATSF RAILROAD
SW 2601		NATIONAL RAILWAY
SW 2602		NATIONAL RAILWAY
SW 3000		NATIONAL RAILWAY
AZCR 3413	54-C-102	WESTERN RAILWAY SUPPLY
AZCR 2278	56-D-152	
AZCR 2279	71-C3-7014	
VCRR 1510	70-C3-1040	MTN DIESEL
VCRR 1512	70-H3-1140	MTN DIESEL
WYCO 6083	818-6637	DURBANO METALS
WYCO 2171	52-J-109	ATSF RAILROAD
OERR 1608	77-H3-7013	
OERR 2072	76-74	GRAND CANYON RAILROAD